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ABUSE OF STATE RESOURCES

A brief introduction to what it is, how to regulate against it and how to implement such resources

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A brief introduction to what it is, how to regulate against it and how to implement such regulations resources

Magnus Ohman

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July 2011

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List of Contents

- Introduction 1
- 1. Understanding abuse of state resources 1
 - Definition of state resources..... 1
 - Definition of abuse of state resources..... 2
- 2. Regulating the abuse of state resources..... 3
 - International documents on ASR 3
 - Ways of regulating ASR 4
- 3. Implementing regulations on ASR 9
 - Particular problems in implementing regulations against ASR 9
 - Legislation often created by persons and institutions that may engage in ASR..... 10
 - Abuses most often conducted by persons or institutions of power..... 10
 - Addressing issues of ASR can seriously expose the PFR to political pressures..... 10
 - PFR may be accused of bias 11
 - Lack of independence of judiciary may jeopardise effective sanctioning 11
 - Solutions 11
 - Determination to fulfil mandate 11
 - Maintaining full independence 11
 - Maintaining own mandate for sanctions 12
 - Seeking regulations that do not depend on proving intentional bias 12
 - Being public about findings..... 12
 - Seeking to build awareness and encourage popular rejection of ASR 12
- 4. Regulations in Georgia 13

The Abuse of State Resources
Magnus Ohman

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INTRODUCTION

“Some activities contributed to a public perception of a lack of distinction between the state and the governing party, as well as between official and party functions of public officials.”¹

This brief paper deals with three separate but closely related issues – how to understand state/administrative resources and the way they can be abused; how to regulate the (ab)use of state resources in political and electoral affairs, and how to implement or enforce such regulations. An initial look is also provided of the relevant regulations in Georgia, though this paper should be viewed more as a starting than an end point on discussing actions against the abuse of state resources in Georgia.

In relation to elections, the institution set to oversee and counteract the abuse of state resources (ASR) is in many cases the Election Management Body, but other agencies with an overall mandate to control the finances of political parties, anti-corruption agencies and/or the regular legal system have important roles to play in some countries.²

1. UNDERSTANDING ABUSE OF STATE RESOURCES

Definition of state resources

The term “state resources” (sometimes referred to as “public” or “administrative” resources) is defined in this document as any resources belonging to the government of a political entity (encompassing both political and administrative entities at national, regional and local level).

State resources are sometimes exclusively thought of as *financial*, including funding streams and the government budget and assets. This is a logical notion, but it must be acknowledged that there are many forms of state resources which can be used to support, or abused to undermine, democratic governance. One way of categorising state resources is the following;³

Financial resources	Monetary assets (normally through the budget of various levels of government as well as publically owned and/or managed institutions)
Institutional resources	Non-monetary material and personnel resources available to the state, including publicly owned media and other communication tools

¹ OSCE/ODIHR (2010) Georgia, Municipal Elections 30 May 2010, OSCE/ODIHR Election Observation Mission Report, page 11.

² In Georgia, the Central Election Commission is responsible for enforcing the regulations against abuse of state resources laid out in the Election Code, in particular Articles 74 to 762 inclusive.

³ The Open Society Justice Initiative “Monitoring Election Campaign Finance, a Handbook for NGOs” (2005), uses the categories “institutional resources” (including what is here termed *financial resources*), “regulatory resources” and “legislative resources” (both of which here included under *regulatory resources*), “coercive resources” (here called *enforcement resources* to avoid using a value laded terminology) and “State media” (here included under *institutional resources*).

Regulatory resources	The mandate to pass laws and regulations that control allowed and prohibited behaviour in the polity. This regulatory prerogative regard anything from the criminal code to the order in which candidates should appear on the ballot paper
Enforcement resources	The use of security and law enforcement institutions on implement laws and rules set up using regulatory resources. This is related to the state having a monopoly on the legitimate use of violence ⁴

In themselves, these resources have no positive or negative value, though through their application they can easily acquire either (or both). Any state must of course have access to resources to develop the country and implement necessary reforms. A state without resources will lack both the capacity to fulfil its necessary tasks and confidence from the public.⁵

However, state resources can also be abused by those who have access to them to ensure that their continued access to these resources is not threatened. This opens for the abuse of state resources – a topic becoming increasingly acknowledged as a serious threat to democracy in many parts of the world.

Definition of abuse of state resources

The abuse of state resources (ASR) is defined as any use of state resources (see above) to support or undermine any political actor (such as a political party or coalition or a candidate for public office). The definition of abuse of state resources excludes situations when all relevant actors receive support (such as through organised provision of public funding to political parties or election candidates).

Note that for the purposes of this discussion, we define abuse of state resources as activities aimed at political gains in one form or another. This is thereby different from regular forms of *corruption*, if we by that term mean self-enrichment. To give a practical example – if a government Minister steals money from his budget to give to his or her political party that is abuse of state resources, whereas if the same Ministers puts the money in his or her pocket that is self-enriching corruption.⁶ While both these types of activities are detrimental to the public good, the former is arguably more *politically* damaging since it threatens to undermine democratic politics.

A difficulty is that effectively all governments will in one way or another use their incumbency to further their chances for re-election.⁷ This is to be expected and to some extent we may also need to accept it. The question is at what point “harmless” politicking turns into destructive abuse of power, and why politicians engage in the latter behaviour while others do not. The first question must be discussed and determined in each polity. The second question is complicated. However, part of the answer is that the less politics is influenced by a winner-takes-all approach, and the more

⁴ As discussed by Max Weber in *Politik als Beruf* (1919).

⁵ An illustration of this is the vicious spiral of tax avoidance seen in many countries. If the state cannot prove that tax funds are being put to good use, people will seek ways to avoid paying taxes, which will further reduce the capacity of the State, which will further reduce public confidence and so on.

⁶ This distinction can assist us in separating different activities, though from a philosophical standpoint abuse of state resources is a form of corruption and corruption including public means entails abuse of state resources.

⁷ The OSCE/ODIHR and the Venice Commission have referred to this as “a natural and unavoidable incumbency advantage”. *Guidelines for Political Party Regulation*, 2010, p 42.

confidence incumbent politicians feel that if they lose power they can regain it through democratic elections, the more likely these politicians will be to build a system focused on due process rather than on their own short-term costs.

2. REGULATING THE ABUSE OF STATE RESOURCES

In many countries, the abuse of state resources is less well understood and regulated than other aspects of political finance. We will start by looking at how formal regulations have been structured in different countries to tackle ASR.

This is not to imply that creating formal regulations will automatically solve the problems (many if not most of the regulations below tend to be honoured more in their breach than observance). However, creating formal rules is at least a way of setting down what is acceptable behaviour in relation to the state and political actors. Without rules of this kind, there will technically (formally) be no violations for the political finance regulator to detect and enforce.

International documents on ASR

Although state resources have presumably been abused as long as there has been resources to use and incumbents to use them (some politicians in Ancient Rome would have had more access to bread and circuses than others), there are as of yet few documents in the field of international law and regulations that directly address the issue of ASR.

CIS, Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms in the Commonwealth of Independent States	Article 3(6) "The candidates do not have the right to take advantages of their official position or advantages of office with the aim of being elected. The list of breaches of the principle of equal suffrage, and measures of responsibility for such breaches are determined by laws."
SADC Parliamentary Forum, Norms and Standards	Paragraph 3.i "The electoral law should prohibit the Government to aid or to abet any party gaining unfair advantage"
"Copenhagen Document" Document on the Copenhagen Meeting of the Conference on the Human Dimension of the OSCE	The Participating States 3. "... recognize the importance of pluralism with regard to political organizations." 5.4. "a clear separation between the State and political parties; in particular, political parties will not be merged with the State 7.6. The States will provide "...political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and the authorities"
Venice Commission, Good Practice in the Field of Political Parties	Paragraph I.2.3.iii "Equality of opportunity must be guaranteed for parties and candidates alike. This entails a neutral attitude by state authorities, in particular with regard to...public funding of parties and campaigns... " Paragraph 41, "Apart from different forms of funding provided for by law, any party must refrain from receiving assistance, financial or in kind, from any public authorities, particularly those directed by its members."

	Paragraph 42, "No party may receive clandestine or fraudulently obtained financial aid."
Council of Europe, Committee of Ministers, Recommendation (2003)4 on corruption	§1 "Objective, fair and reasonable criteria should be applied regarding the distribution of state support." §5 (c) "States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties."
The Carter Center, Statement of the Council of Presidents and Prime Ministers of the Americas - Financing Democracy: Political Parties, Campaigns, and Elections	P 2, "Unfair incumbency advantages should be addressed and the use of state resources that are not made available to all candidates in the electoral campaign should be prohibited."
OSCE/ODIHR, Legal Framework,	p. 21-22 "...the legal framework should ensure that state resources are not misused for campaign purposes and that they are used only with strict adherence to the applicable legal provisions"
OSCE/ODIHR, Observation Handbook (Fifth Edition)	P 18, 47, "Regulations on campaign financing should not favour or discriminate against any party or candidate.... —Government office space, vehicles, and telecommunications equipment should not be used for partisan purposes unless equal access is provided to all contestants."
United Nations Convention Against Corruption (UNCAC)	Article 19, „Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position."

Ways of regulating ASR

There are several ways through which legislation can address the abuse of administrative resources. These can be categorised under four headings;

- A. Require all public entities (or entities with a public connection) to act impartially (a general type of regulation. See points 1 and 2 below.
- B. Banning public entities (or entities with a public connection) from engaging in activities that directly favour or disfavour any political actor (specific bans on certain types of behaviour). See points 3-5, 7-11 below.
- C. Banning public entities and entities with a public connection from certain types of behaviour *regardless of whether there is an intent* to favour or disfavour any political actor (at all times or during particular periods, such as election campaigns). See point 12 below.

- D. Banning political actors from receiving favour from public entities (or entities with a public connection). See point 6 below.

The below list gives some practical examples of methods of regulating ASR (note that the list is not exhaustive). Examples are given to show how such regulations have been used in different countries – note that it does not mean that these rules have been enforced in practice.

1. Compelling state agencies and employees/public servants to *act impartially in all matters*

The most general form of regulation is to demand impartiality in the behaviour of state actors. Such a regulation is unlikely to be sufficient on its own (lacking as it does detailed information on the type of activities that are banned), but it can function as a powerful statement of principle by which all those working within the state must abide.

The Constitution of Georgia lays down as a general principle that “Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, *political and other opinions*, national, ethnic and social belonging, origin, property and title, place of residence” (Article 14, emphasis added). Equally, the Administrative Code Article 4(1) notes that “Everyone shall be equal before law and an administrative agency”, whereas Article 8 (1) states that “An administrative agency shall exercise its authority impartially”. The Croatian Civil Service Act has a similar wording (Art 6).

2. Specific requirements for state agencies and employees/public servants to *act impartially in relation to political parties and election campaigns*

This is a slightly more specific version of the method above, by focusing specifically on political parties and candidates. Both these methods apply to all forms of state resources discussed above, including regulatory and enforcement resources. Again, regulations of this kind can establish an important principle, but they are unlikely to be sufficient on their own.

The Electoral and Political Parties Law in Guatemala bans public officials from using their position to support or undermine any candidate.⁸

3. Banning the *use of administrative resources in election campaigns (except when provided as part of legally regulated public funding of political parties and/or election campaigns)*

Another method is to ban certain types of resources from being used in relation to election campaigns. This can relate to specific funds (the Polish Presidential Election law states that campaign expenditures cannot be met by the State or local government budgets (Art 86)), but it can also relate to institutional resources (such as the use of public servants in campaigning, see further point 7).

One example is the Parliamentary Elections Law in Lebanon, which states that “Public utilities, governmental institutions, public institutions, private or public universities, faculties, institutes and schools, and houses of worship may not be used for electoral events and rallies or for posting pictures or for electoral promotion purposes.” (Art 25).

⁸ The Carter Center (2004) *Final Report, Political Finance Project, Carter Center Observation Mission to Guatemala*. April 2004. P 6.

4. **Banning public agencies from providing funds to political parties or candidates (except when provided as part of legally regulated public funding of political parties and/or election campaigns)**

This is similar to the form of regulation above, but instead of placing focus on the resources being used it emphasises the actor. Normally this type of regulation focuses mainly on financial resources.

In Afghanistan, government agencies are banned from providing financial support to electoral candidates, unless it “provides equal facilities to all candidates”.⁹

5. **Banning provision of funds from agencies with relation to the State, such as partially state-owned corporations or organisations to political parties or candidates**

Taking a step away from direct state institutions, there is a need to regulate the behaviour also of institutions that have a close connection to the state. The Council of Europe Parliamentary Assembly has recommended that European countries should maintain “a ban on donations from state enterprises, enterprises under state control, or firms which provide goods or services to the public administration sector”.¹⁰ Note that regulations of this kind are normally both intended to stop public money being misused for the benefit of political actors, and to hinder quid-pro-quo donations where companies with government contracts provide funding to win further contracts in the future.

In Slovenia, the Elections and Referendums Act states that “The elections campaign shall not be financed by budgetary funds and funds of companies whose invested public capital exceeds 25% and companies in which they have a majority holding, except by the funds provided to the political parties from the budget in compliance with the act regulating political parties.” (Art 4).

6. **Banning political actors such as political parties and candidates from receiving funds from sources discussed in 2, 3 and 4**

The purpose of this type of regulation is to penalise also the recipient of banned funding, and by the threat of sanctions thereby help to alter their incentive structure. For example, the electoral law of Slovakia states that “The Candidate for the President cannot receive a gift nor other not-to-be-paid-back performance from the State, nor organs of state administration or organs of municipal government.” (Art 18.2). Only rarely can this type of regulation be applied effectively to state resources other than financial.

7. **Banning state employees/public servants from participating in electoral campaign activities**

Apart from countries where campaigning is dominated by media advertising, personnel resources are often crucially important for the campaign efforts, and it is important that public servants are not used to engage in campaign activities. In other words, public servants constitute an important institutional resource which must not be abused.

Such bans are common practice in many countries, such a Venezuela where state employees “may not abandon their normal working duties to participate in electoral activities or those of political

⁹ IEC (2010) Regulation on Campaign Finance Disclosure by Wolesi Jirga Candidates, Article 3 (3&4).

¹⁰ Council of Europe Parliamentary Assembly (2001) Recommendation 1516 (2001) Financing of political parties. Available at <http://assembly.coe.int/main.asp?link=/Documents/AdoptedText/ta01/erec1516.htm>

parties, voter groups, or candidatures for positions obtained through public elections”.¹¹ Whereas Venezuelan ban relates to the activities of state officials while on duty, many countries ban senior state officials such as judges from participating in campaign activities altogether.

8. Place special demands on *political neutrality on key sections within the state structures, such as election management and law enforcement agencies*

While the entire state machinery must be neutral in relation to elections, some institutions are of particular importance, including the justice system and those working directly with election management. The Parliamentary Election Act in Poland states that “Members of [electoral] commissions are prohibited from involvement in election campaigning for any candidate for deputy or senator or for any list of candidates” (Art 34.3).

The Constitution of Malawi includes provisions making it illegal for police officers to “exercise functions, powers or duties for the purposes of promoting or undermining the interests or affairs of any political party or individual member of that party, nor shall any member of the Malawi Police Force, acting in that behalf, promote or undermine any party or individual member of that party”(Art 158).

9. Requiring *publicly owned media to be impartial in reporting on political actors and election campaigns and to devote equal time to all competitors*

Media has become increasingly important in campaigning in many countries, and where publically owned media has a strong position, its neutrality will be a necessity for credible elections. According to the political party finance database by International IDEA, 63% of the 114 countries for which it has data have regulations on the provision of free airtime to all political parties.¹²

In Moldova, the Electoral Code states that “It is prohibited to air, apart from the air time granted free of charge during debates, spots and TV or radio reports, on the activity of the electoral contestant or on their or their trustees participation in meetings with the voters, on working visits of the electoral contestants who hold offices at republican or rayon level. No electoral candidate shall be entitled to privileges due to the offices they hold.”(Art 47.4)

10. Requiring some or all *public servants to resign from their position before standing for elected office*¹³

The purpose of this type of regulation is to reduce the temptation of people with access to public funds to use this access in running for elected office. In Georgia, a long series of persons must resign their position before seeking election to Parliament (see the table in chapter 4).

A difficulty with this type of regulation is that its implementation could actually facilitate abuse of state resources, if the public employers decide not to re-hire persons who unsuccessfully stand for office for the opposition, while allowing those who stood for the government party to return to

¹¹ Article 215 of the Basic Law of Suffrage and Political Participation, as cited in EUEOM (2006) Final Report, Presidential Elections Venezuela 2006, P 40.

¹² See <http://www.idea.int/parties/finance/db/index.cfm>. Note that the date in this database is somewhat dated – an updated version will go online in late 2011.

¹³ A regulation of this kind does not directly address the abuse of state resources, as it would be perfectly possible for a public servant to stand for election without getting involved in such activities. However, the purpose of such regulation is normally to reduce the risk of such abuse taking place (another reason can be to avoid the politicisation of the public service or government administration).

their posts. This type of regulation should therefore be combined with strict rules regarding neutrality and transparency in public hiring practices.

11. Clearly specify the rules for relevant authorities on the issuing of permission regarding rallies and other campaign activities, and limitations that may be imposed on such activities

A common abuse of enforcement resources is for state officials to refuse the opposition the right to campaign effectively by banning rallies and other campaign activities.

In the Former Yugoslav Republic of Macedonia, the Electoral Code establishes that “The permission for holding a pre-election rally shall be issued by a person in charge of the institution, under equal conditions for all election campaign organizers” (Art 82.3).

12. Banning activities that may indirectly benefit the incumbent by for example advertising the success of Ministries or other state agencies

As discussed in detail below, an effective approach can be to ban certain types of activities during the pre-election period, whether or not it can be shown that the intent or effect of such activities was to favour or disfavour any political actor.

In Mexico in 2006, the EMB bans the promotion of social development programmes for 40 days before elections are held, as this can be used to entice voters to support the incumbent regime.¹⁴ Similarly the Code of Conduct issued by the Election Commission in India makes a number of restrictions on what incumbent politicians and state authorities can and cannot do during the campaign period, including banning them from;

“(a) announce any financial grants in any form or promises thereof; or

(b) (except civil servants) lay foundation stones etc. of projects or schemes of any kind; or

(c) make any promise of construction of roads, provision of drinking water facilities etc.; or

(d) make any ad-hoc appointments in Government, Public Undertakings etc. which may have the effect of influencing the voters in favour of the party in power.”¹⁵

To reduce the risk of *indirect* support being given to the incumbent government in Guatemala, the “constitution also forbids officials from issuing propaganda about public works and other achievements during campaigns. These bans are obviously intended to deny the incumbent party any unfair advantage over its competitors.”¹⁶ Finally, the Omnibus Election Code in the Philippines bans “Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations” (during 45 days before an election) (Art 261.2).

¹⁴ EUEOM (2006) *México Elecciones Presidenciales y Legislativas 2 de julio de 2006*, Informe Final. P 25f.

¹⁵ Election Commission of India (2007) *Model Code of Conduct for the Guidance of Political Parties and Candidates*. Section VII (vi).

¹⁶ The Carter Center (2004) *Final Report, Political Finance Project, Carter Center Observation Mission to Guatemala*. April 2004. P 6

13. *Regulating the provision of public funding to political parties and/or election campaigns to ensure a formal process that does not unduly benefit any political party or candidate.*

The final two methods here are indirectly related to counter-acting ASR. The provision of regulated public funding to political parties or (less common) candidates is often seen as a way of reducing the dependency of political actors on private benefactors. However, it can also function as a provision of public funds in a regulated manner to both government and opposition, and so (if combined with direct methods to stop ASR) it can reduce the illegitimate benefits of incumbency.

More than half of the countries in the world now use public funding in some form, and international institutions such as the Council of Europe and the Southern African Development Community Parliamentary Forum calls on its respective member states to provide public funding to political parties in a regulated and fair manner.

14. *Requiring political parties (and candidates) to report on their finances (on-going and in relation to elections), to facilitate the detection of abuse of administrative resources*

Transparency is a key principle of political finance oversight in general, and counter-acting the ASR is no exception. Around two-thirds of all states now require political parties to submit financial reports, whereas less than half have such regulations for candidates. In practise, the number of countries with effective disclosure is much smaller.¹⁷

3. IMPLEMENTING REGULATIONS ON ASR

Particular problems in implementing regulations against ASR

Unfortunately, there are many examples of Political Finance Regulators being unable to address the issue of ASR. Some brief examples from observer reports;

Georgia 2010

“...it is important to clearly define the mandate of the supervisory institution overseeing the proper use of administrative resources. Previous elections have shown that the Central Election Commission (CEC) cannot perform this role effectively. Thus it is important to either elaborate the mechanisms for increasing the effectiveness of the CEC or to identify another institution responsible for the oversight.”¹⁸

Cambodia 2008

“Probably the most significant feature observed by this delegation was the overwhelming presence and dominant position of the ruling CPP party. The use of state resources by the CPP... was also observed by this delegation and reported orally to the NEC, although with no much effect.”¹⁹

¹⁷ Ohman, Magnus & Zainlubhai, Hani (eds) *Regulating Political Finance, The Global Experience*. IFES. p 108.

¹⁸ Transparency International Georgia (2010) *The Use of Administrative Resources for Election Campaign, 2010 Local Self-Government Elections*, page 3.

¹⁹ European Parliament (2008) *Parliamentary Elections in Cambodia, Election Observation Delegation, 24 – 29 July 2008*. Report by Mr Glenn Flynn, Chairman of the Delegation.

Yemen 2006

“Disappointingly, neither the SCER nor the Office of the Public Prosecutor took any steps to enforce the Elections Law or to seek punishment for clear and repeated violations”²⁰

Angola 2008

“The weak role of CNE as an oversight body became even more evident during the campaign period, when it failed to fulfil its role in of taking any remedial action in response to violations of election laws by the ruling party. For example, the CNE did not... act to stop the abuse of state resources by the ruling party.”²¹

It is easy to condemn political finance regulators that fail to enforce regulations on issues as important as the abuse of state resources. However, we must recognize the often very formidable problems that the Political Finance Regulator in many countries face when they try to do so (the Political Finance Regulator (PFR) is the institution set to enforce political finance rules and regulations – in Georgia the PFR is the Central Elections Commission).

Legislation often created by persons and institutions that may engage in ASR

One problematic aspect is that politicians create the legislation and overall framework for combating ASR in the country, while at the same time these politicians are those who may benefit from engaging in the same activities, now or in the future. Governments, which often hold a legislative majority, may prove unwilling to pass legislation that will de facto include a control over its own behaviour.

Note also that while opposition political parties may champion efforts to combat ASR, they may not be fully in favour of a system that includes effective control and sanctions of such misconduct, in case they should one day gain power. There may be an implicit concurrence of views among government and opposition leading to effective measures not being passed, leaving the PFR with incomplete legislative and regulatory support for counteracting ASR in elections and in political life in general.

Abuses most often conducted by persons or institutions of power

This problem is closely related to the one above, but focuses on culprits of abuses rather than those creating regulation. While “regular” electoral fraud such as vote buying, ballot stuffing and intimidation can often be conducted by various groupings, ASR is often limited to those in a position of political power, normally in government and including persons with very significant powers or with the support of others holding such powers.

In some countries, ASR becomes an endemic part of the strategy by the government party or parties to remain in power. In these situations, the independence of the PFR will be heavily targeted to ensure maintenance of the status quo.

Addressing issues of ASR can seriously expose the PFR to political pressures

Since activities connected to ASR are normally conducted by those in power, their interest in maintaining their position may lead them to exercise pressure on the PFR to ignore cases of ASR or to at least not actively pursue penalties in such cases. The future careers or even safety of PFR Commissioners and officials who take a firm stand on ASR may be seriously jeopardised.

²⁰ EUEOM (2006) *Yemen 2006, Final Report on the Presidential and Local Council Elections*. P 21.

²¹ Human Rights Watch (2009) *Democracy or monopoly?: Angola's reluctant return to elections*. P 20.

PFR may be accused of bias

Since the opportunity to abuse state resources is most often only available by the political party/parties in power (and by incumbent politicians), addressing this issue can lead to accusation that the PFR is acting in the interest of the opposition.

The one-sidedness of abuse of state resources can become a problem for a PFR that finds itself constantly doing battles with the government side, leaving it little time to investigate the dealings of the opposition (which may abuse state resources just as much if they gain power).

Lack of independence of judiciary may jeopardise effective sanctioning

Even if the PFR decides to deal actively with issues relating to ASR, issuing sanctions (in particular more serious sanctions) will often require it to refer cases to the court system or to an official complaints mechanism outside of its own control. Such a system can help to protect Rule of Law, but in situations where the judicial system is effectively under the control of the incumbent regime, it may prove a significant hinder in the effective enforcement of ASR regulations. Any system to counteract ASR is indeed only as strong as its weakest link.

Solutions

The severe problems with implementing rules against ASR outlined above emphasise the need for concerted efforts in creating effective and impartial enforcement mechanisms. Unfortunately, while there is a general acknowledgement of the need to counteracting ASR, there is little in the way of agreement regarding how this should be done. For example, the ASR recommendations in the OSCE/ODIHR/Venice Commission *Guidelines for Political Party Regulation* (2010) do not go beyond calling for clear definition of what constitutes abuse and banning state employees having to attend rallies or paying a particular party (p 43), and the Council of Europe Committee of Ministers simply argue that “States should prohibit legal entities under the control of the state or of other public authorities from making donations to political parties” (Rec 2003, 4, Art 5c).

Determination to fulfil mandate

Many PFRs (especially those that also function as EMBs) will be reluctant to engage in matters relating to the abuse of state resources for all the reasons discussed above. Many EMBs find that dealing with matters of political finance and especially the abuse of state resources jeopardises its independence and ability to conduct activities that it sees as more directly relevant to its mandate, such as the technical administration of elections.

However, it is important to realise that an EMB may fully fail in its mandate of delivering free and fair elections if it does not deal with ASR, regardless of how well the elections are administered technically. All painstaking preparations of boundary delimitation, voter registration and election day operations may have no beneficial impact on national democracy if the incumbent regime uses state resources to outspend or harass the opposition. Any professional EMB must therefore consider the elections they organise in their proper context (although limitations in the EMB’s mandate may require it to seek co-operation with other agencies to effectively counteract ASR).

Maintaining full independence

The importance of establishing independence for Electoral Management Bodies has become readily appreciated internationally, and the same certainly applies for PFRs with a mandate to oversee the role on money in the politics of a country. There is no point where such independence is more important than when a PFR enforces regulations against state officials or the government party for abusing state resources.

As discussed above, the violators may be senior government party officials, Ministers or even the Head of State. The PFR must therefore guard its independence jealously, even regarding very minor violations. Any action that can be seen as relinquishing the PFR's independence must be avoided.

Maintaining own mandate for sanctions

In situations where the judicial system is closely connected to the incumbent regime, the PFR may be unable to achieve effective enforcement if it is dependent on courts to impose sanctions. In such cases, the PFR should seek to maintain its own sanction system for violations as far as possible within the legal system.

This will allow the institution to impose at least minor sanctions against abuses, and these sanctions can help to bring increased attention to the issue, and could lead to the court system taking seriously cases (or appeals) that fall within their scope of authority.

Seeking regulations that do not depend on proving intentional bias

Proving that a certain activity benefitted an incumbent political party or candidate can be a very difficult task. It gets even more difficult if it has to be proven that producing such benefits it was the *intention* of the activity. Therefore, PFRs should whenever possible seek to break the causal link in regulations between the activities and their effects, and simply state that certain actions are not allowed during a determined pre-election (campaign) period. Activities might include increasing the salaries in the public sector (though such a regulation would most likely be very unpopular among such staff), the announcement and inauguration of new public works and the use of (non-urgent and not electorally related) public awareness campaigns.

The likely effect of this approach is not that the abuse of administrative resources would cease, rather that it would happen before the beginning of the determined period. However, pushing the abuse of administrative resources further away from the election date is likely to reduce its effectiveness, and may make such a strategy less attractive.

In an earlier paper on political finance in Georgia, Marcin Walecki discussed this option in terms of a "special period of fairness".²² He also discussed the similar option of banning certain activities at all times (still not directly tied to evidence of intent to favour or disfavour any political actor).

Being public about findings

In some situations the PFR may not have the mandate to penalise ASR, or it may be practically impossible for it to do so through a lack of cooperation of other agencies (as above). Also in such cases however, the PFR can gain both public credibility and put pressure on other agencies to act by publically announcing its findings regarding legal violations or illegitimate behaviour relating to the abuse of state resources.

In other words, where a mandate including effective sanctioning powers is not given to the PFR, or where the right to appeal to the mainstream legal system renders such a mandate impotent, the PFR may need to resort to "naming and shaming" those who violate ASR regulations.

Seeking to build awareness and encourage popular rejection of ASR

There are various ways that legislation and different forms of regulation can be used to counteract the abuse of administrative resources. However, two factors speak against formal regulations ever being sufficient to put an end to such activities. The first is that legislation is passed by Parliament, and the majority of MPs (normally) belong to the government party or parties, which means that

²² Walecki, Marcin (2009) Political Finance in Georgia. IPSA/IFES, p 5.

they in this context regulate themselves. The second is the more general point that there is a limit to how much we can regulate political behaviour through formal rules. Societal norms and standards to a large extent determine what is and what is not seen as acceptable conduct.

Civil society groups and media outlets have an important role to play in building popular opinion in the area of political behaviour, making people understand how the abuse of state resources is not only a threat to democracy but also a waste of public resources, as such spending does not form part of carefully thought out plans on societal needs and cost-effective implementation.

Naturally, building such opinion takes a significant amount of time, but as long as it is not done the abuse of administrative resources is destined to haunt the political process.

4. REGULATIONS IN GEORGIA

The below table is intended to show how Georgian regulations relate to the above discussed list of regulatory options. Putting this table in contrast to the above noted reports of abuses creates a good illustration that what is lacking in Georgia is not so much legal coverage as actual implementation.

Form of regulation	Georgian regulation
Banning the <i>use of administrative resources in election campaigns</i> (except when provided as part of legally regulated public funding of political parties and/or election campaigns)	Election Code , Article 73, 10. It is forbidden to conduct election campaigning in buildings of the following institutions: Bodies of executive authority of Georgia; Courts; Military units.
Banning <i>public agencies from providing funds to political parties</i> , or banning political parties from receiving such funds (except when provided as part of legally regulated public funding of political parties and/or election campaigns)	Organic Law of Georgia on Political Unions of Citizens Article 26, Political Parties must not receive “physical and material contributions from... (b) a state entity, legal entity of public legislation, state organization and the venture, in which the share of the state is above 10% except cases envisaged by this law”
Banning <i>provision or receipt of funds from agencies with relation to the State, such as partially state-owned corporations or organisations</i> to political parties or candidates	Organic Law of Georgia on Political Unions of Citizens Article 26, Political Parties must not receive “physical and material contributions from... (b) a state entity, legal entity of public legislation, state organization and the venture, in which the share of the state is above 10% except cases envisaged by this law”
<i>Regulating the provision of public funding to political parties and/or election campaigns</i> to ensure a formal process that does not unduly benefit any political party or candidate.	Regulated at length in Articles 29 – 31 in the Organic Law of Georgia on Political Unions of Citizens
Requiring political parties (and candidates) <i>to report on their finances</i> (on-going and in relation to elections), to facilitate the detection of abuse of administrative resources	Regulated at length in both the Organic Law of Georgia on Political Unions of Citizens (annual reporting) Articles 32 – 34 and Election Code (campaign finance reporting Articles 46 – 48).

Compelling state agencies and employees/public servants to <i>act impartially in all matters</i>	General Administrative Code of Georgia Articles , Article 4.1, Everyone shall be equal before law and an administrative agency. Article 8.1, An administrative agency shall exercise its authority impartially.
Specific requirements for state agencies and employees/public servants to <i>act impartially in relation to political parties and election campaigns</i>	No such regulation, although passages in Articles 73 to 76¹ ban public officials from campaigning in certain circumstances and from certain types of behaviour towards election subject.
Banning state employees/public servants from participating in electoral campaign activities	Election Code , 5. The following persons and entities do not have the right to take part in election agitation: a) Members of election commissions; c) Judges; d) Public officials of the Ministries of Internal Affairs and Defence, Special Service of Foreign Intelligence and State Security, Office of Public Prosecutor h) Public officials of bodies of State and local self-governance, when they are carrying out their duties [21.03.08. N6013]
Requiring <i>publicly owned media to be impartial</i> in reporting on political actors and election campaigns and to devote equal time to all competitors	Election Code - Media outlets are required to allocate free airtime for parties/candidates on an equal basis (Article 73, 73 ¹) but there is no regulation that the reporting in public media must be unbiased.
Requiring some or all <i>public servants to resign from their position before standing for elected office</i>	Election Code Article 94 , ²³ Persons holding the following offices must resign within 2 days after applying to the appropriate election commission, for the purpose of being registered as a candidate for the Parliament of Georgia: a. The President of Georgia; b. Ministers of Georgia and autonomous republics, heads and deputy heads of governmental and state departments and departmental institutions; c. Members of the Security Council of Georgia (except MPs); d. Members of the Board of the National Bank of Georgia; e. The chairperson and vice-chairpersons of the Chamber of Control of Georgia; f. The state representatives – Governors and their deputies; g. Head of the local self-governance bodies; h. Officers of the Ministry of Interior of Georgia and Ministry of Defense of Georgia as well as Special Services of Foreign Intelligence and State Protection; i. Judges; j. Public Defender and Deputy Public Defender of Georgia; k. Members of the advisory body to the President of Georgia (who are not MPs); m. Assistants to the President of Georgia; m ¹ . Members of the High Council of Justice of Georgia (who are not MP) l. Members of the Board for Auditing Activity; m. Members of the Commission for Accounting Standards, Georgian National Energy and Water Supply Regulatory

²³ Similar requirements exist for candidates for local government bodies (Article 111) though not for Presidential candidates.

	<p>Commission and other national regulatory commissions;</p> <p>n. Chairperson and deputy chairpersons of the Informational Bureau of Property and Financial Status of Officials;</p> <p>o. Prosecutors, deputy prosecutors, assistants to prosecutors, and investigators.</p>
<p>Clearly specify the rules for relevant authorities on the <i>issuing of permission regarding rallies and other campaign activities, and limitations that may be imposed on such activities</i></p>	<p>Election Code Article 74, 3. It is prohibited to forbid and stop rallies and manifestations, except for cases when there are slogans calling to violate human rights and liberties, independence and the territorial integrity of the country, to instigate national, ethnic, provincial, religious and social strife, to overthrow the constitutional system and replace it through violence, as well as to propagate war and violence.</p> <p>4. Bodies of local self-governance and government are obliged to support election subjects in organizing and holding meetings and assemblies with voters, public debates and discussions, rallies and manifestations and to ensure the safety of these events.</p>

To provide interpretations of some of the passages discussed above, the Central Election Commission and five leading Non-Governmental Organizations in the spring of 2010 signed a Memorandum together with 15 political parties on the Use of Administrative Resources in the 2010 elections. It can be concluded that while legal reform is needed in Georgia on this issue, there is no lack of regulations, and the main prerequisite for improvements lies in the area of implementation rather than legislative reform.